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IN THE

Supreme Court of the United States

No. 79—October Term, 1961

LEHIGH VALLEY COOPERATIVE FARMERS, INC.,
and
SUNCREST FARMS, INC.,
Petitioners,

against

UNITED STATES OF AMERICA AND EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES OF AMERICA,
Respondents.

BRIEF OF ATTORNEY GENERAL OF THE STATE OF NEW YORK, *AMICUS CURIAE*, IN SUPPORT OF AFFIRMANCE

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Opinions Below

The opinion of the District Court (R. p. 210a) is reported in 183 F. Supp. 80 (1960). The opinion of the United States Court of Appeals, Third Circuit, is reported in 287 F. 2d 726 and is printed at page 898 of the Transcript of Record. This Court granted certiorari June 19, 1961. (366 U. S. 957.)

Jurisdiction

The jurisdictional facts are recited in the Petition for the Writ of Certiorari.

Question Presented

The principal question is whether or not the section of the order requiring compensatory payments (7 C. F. R. § 927.83) by handlers through the producer settlement fund to pool producers on milk delivered to non-pool plants by dairy farmers for sale in the marketing area is in conflict or is inconsistent with the uniformity requirement of § 608c(5)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U. S. C. §§ 601 *et seq.*).

Statutes and Regulations Involved

The statute is found as the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. §§ 601 *et seq.*). The regulation is in the form of an order known as the New York-New Jersey Milk Marketing Order, 7 C. F. R. §§ 927.1 *et seq.* (commonly referred to as Order 27) and in particular § 927.83 (R. pp. 879a-882a).

Statement

(New York's Interest)

The statement of the case set forth in the brief of the Secretary of Agriculture is adopted. However, we deem it necessary to add that there exists between the Secretary and the Commissioner of Agriculture and Markets of New York a cooperative administrative arrangement pursuant to which Order 27 functions. This integration is expressed in the form of a Memorandum of the Principles of Cooperation (Appendix A, p. 13) and is effectuated by a companion state order.

Cooperative federal-state regulation is authorized by both federal and state statutes. The federal act provides [7 U. S. C., § 610(i)]:

"The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of sections 601-608, 608a, 608b, 608c, 608d-612, 613, 614-619, 620, 623, and 624 of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 608c of this title) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: *Provided*, That information furnished to the Secretary of Agriculture pursuant to section 608d (1) of this title shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 608d (2) of this title."

The state statute provides (N. Y. Agriculture and Markets Law § 258-n):

"The commissioner is hereby authorized to confer with legally constituted authorities of other states and of the United States with respect to a uniform milk control with states and/or as between states, and with the federal government in its control of prices of milk handled in interstate commerce, and may exercise his powers hereunder to effect such uniform milk control. He may join with such other authorities federal and state in conducting joint investigations, holding joint

> hearings and issue joint or concurrent orders, or orders supplementary to those of the federal government, and shall have the power to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent or supplementary orders."[1]

The Secretary of Agriculture and the Commissioner of Agriculture and Markets agreed that

> "It shall be the policy of the Secretary of Agriculture and the Commissioner to act jointly in the formulation and issuance of complementary and concurrent orders * * * and in pursuance thereof to jointly arrange for cooperation in the conduct of preliminary investigations, to hold joint or concurrent hearings, to jointly consider the facts contained in the record of such hearings, and to maintain a mutual exchange of views conducive to common agreement upon all essential provisions prior to the issuance of either order. The same policy of joint action shall be followed with respect to modifications of or amendments to such orders" (Appendix A, p. 13).

The Secretary and the Commissioner, pursuant to law and their compact, held joint hearings in 1938 prior to the initial promulgation of Order 27, and federal and state orders as issued were based on the record of the joint hearings and were concurrent and complementary. In adopting Order 27, the Secretary said (3 F. R. 1951):

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[1] By L. 1961, ch. 842, § 2, the New York legislature added a new second paragraph to § 258-n, reading as follows: "In order to carry out the policy set forth in section two hundred fifty-eight-k, the commissioner is hereby vested with the authority to enter into a compact or compacts with the legally constituted authorities of other states and/or the United States to provide for uniform milk control and, in order to effectuate such uniform milk control, he may join with an agent or agencies to exercise under such compact or compacts the powers conferred upon him by this article with respect to the administration of uniform milk control. Any such compact or compacts may provide for necessary assessments upon the handlers regulated thereunder, in order to cover the cost of administering such uniform milk control, including, without limitation, the cost of auditing milk dealers' classifications."

> "This order shall become effective after the issuance by the Commissioner of Agriculture and Markets of the State of New York of an order containing provisions similar to the provisions of this order and to which this order shall be complementary * * *" (See R. p. 26, in *United States* v. *Rock Royal*, 307 U. S. 533).

In the state order the Commissioner said:

> "WHEREAS, the Secretary of Agriculture of the United States has determined to promulgate and make effective his Order No. 27 regulating the handling of milk in the aforesaid New York Metropolitan Milk-Marketing Area;
>
> "NOW, THEREFORE, I, Holton V. Noyes, the Commissioner of Agriculture and Markets of the State of New York, pursuant to the terms and provisions of the Agriculture and Markets Law, as amended, and in accordance with the power and authority in me vested, do hereby adopt and promulgate Official Order No. 126, said order to become effective concurrently with and to be complementary to such similar Order No. 27 to be made effective by the Secretary of Agriculture of the United States" (Appendix B, p. 19).

The language of the compensatory payment provision of the state order is the same as that of the federal order provision (Appendix C, p. 21).

Similar joint hearings have been held and upon their records concurrent and complementary amendments have been made over the years. The Memorandum of the Principles of Cooperation is still in effect.

Since 1938 federal-state milk regulation in New York has been administered by a Market Administrator appointed jointly by the Secretary and the Commissioner, and, by delegation of authority to him, the Administrator has been clothed simultaneously with all the authority, both federal and state, pursuant to the respective statutes. This au-

thority he exercises jointly—not separately. There is a single milk pool which is both federal and state as a joint operation and a single regulatory program.[2]

In 1957 the marketing area was extended (as of August 1) to northern New Jersey (22 F. R. 4643) and as thus amended continued in effect the requirements for compensatory payments (R. p. 817a; 22 F. R. 4221-4222).

Therefore, New York's interest is in sustaining the compensatory payment provision because if not workable under the federal part, then there is serious question as to the validity of that provision of the New York Order. Economically, New York's interest is substantial. Milk production and distribution are a paramount industry of the state (*Nebbia* v. *New York*, 291 U. S. 502, 517) and the people of its great cities depend largely upon an adequate supply of pure fresh milk. "So essential is it for health that the consumer has been willing to forego unrestricted competition from low cost territory to be assured of the producer's compliance with sanitary requirements, as enforced by the municipal health authorities" (*United States* v. *Rock Royal*, 307 U. S. 533, 570).

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[2] The integrated regulatory scheme is described by Mr. Justice Black in *Hood & Sons* v. *DuMond*, 336 U. S. 525, 560, *viz.*: "In the foregoing provisions Congress manifested its purpose to subject the milk industry to two cooperating authorities: (1) state legislatures and their selected administrative authorities, and (2) the Secretary of Agriculture. Congress did far more than direct a formal, polite cooperation between New York and the Secretary of Agriculture. Recognizing the compelling necessity for a state-federal integrated regulatory system for the milk industry, Congress was careful to leave the door open for the Secretary of Agriculture and state authorities working together to formulate mutually complementary orders in the field. These complementary state-federal laws and orders were to be aimed at precisely the same evils believed to have been generated by chaotic competitive conditions in the milk industry. The objective of both laws was to help impoverished farmers. 48 Stat. 31, 7 U. S. C. § 601."

ARGUMENT

I. If partially-regulated handlers may sell fluid milk in a regulated market, they will replace equivalent sales by fully regulated handlers. This will lower the price to all fluid producers who supply the regulated market by forcing more of their milk into lower price surpluses, and it gives the partially-regulated handler the advantage of dumping his surplus in the regulated market, all to the disruption of the regulation. The prevention of this consequence justifies the imposition of the compensatory payment requirement.

The District Court reached the conclusion that there is sufficient evidence to support a finding of need for some form of regulation of the sale of milk and its products by non-regulated handlers in the Order 27 area. (Clary, J. R. p. 226a.)

The compensatory payment form chosen by the Secretary would produce the desired result were it not for the claim that it runs afoul of § 608c(5)(A) of the Act. It is not the function of this *Amicus Curiae* to attempt to distinguish *Kass* v. *Brannan*, 196 F. 2d 791, on either the facts or the law. That has been done by the Court of Appeals.

Uniformity of price does not necessarily mean identical exactness to every handler under and outside the order. The word "uniform" as applied to a statute or rule is that it is of unvarying standard and not different at different times or places as it affects a group or section. A statute is said to be uniform in its operation when it operates equally upon all persons who are brought within the relations and circumstances provided for. A tax statute is said to be uniform when it has the essential of equality and bears

alike upon all the property within limits wherein it is lawful to levy for a purpose.[3]

Lehigh and Suncrest being non-pool handlers do not participate in the equalization features of Order 27 by accounting for milk in each class and by settling with the Producer Settlement Fund on their complete utilization of milk. Neither are they required to pay to their producer suppliers the uniform producer prices established by Order 27. Accordingly, when they sell non-pool milk in the marketing area, an equal amount of pool milk of the fully regulated handler is displaced and sold for manufacturing purposes. The fully regulated handler of the displaced pool milk will in these circumstances account to the equalization fund at the lower Class III price for manufacturing uses instead of at the Class I price for fluid milk as he would have done had the non-pool milk not been sold in the marketing area. Since Lehigh and Suncrest do not account to the equalization fund for any milk sold in the marketing area, the fund will, in the absence of the compensatory payment, lose the difference between the Class I and Class III prices. The compensatory payment makes the equalization fund whole. It assures payment of the uniform blended price to producers whose milk is subject to full regulation under the Order and protects the fully regulated handler under the Order from the competition of the unregulated handler outside the Order who would have an advantage if the compensatory payment were not required. Constitutionally the handler totally regulated by the market order would have no protection against this outside competition since the Fourteenth Amendment does not protect a business against the hazards of competition. (*Hegeman Farms Corporation* v. *Baldwin*, 293 U. S. 163, 170.)

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[3] Black's Law Dictionary, 3rd Edition, West Publishing Co. 1933.

The District Court thought outside competition to be real and noticed the intent that the compensatory payments are designed to offset the harmful effect created by it. (R. pp. 215a-216a.)

II. The provisions of the order requiring compensatory payment are not in conflict with or inconsistent with the uniformity requirement of § 8c(5)(A) of the Agricultural Marketing Agreement Act of 1937, but aid in effectuating its acknowledged purposes.

We submit that it would be error to conclude that lack of uniformity lies in a comparison of producer returns or producer prices with minimum class prices. Producer prices and class prices may or may not be comparable. Lehigh, being a cooperative association of dairy farmers, will return to its members the highest possible returns from the sale of their milk and will also include earnings from its manufacturing and distribution operations.[4] A handler may, by reason of competition, be willing to pay or be forced to pay a price in excess of the official minimum price, while another dealer in an entirely different competitive situation may be able to buy at the minimum price which then becomes his "producer price" or cost. Even fully regulated handlers encounter differences in "producer prices" because of competitive or other conditions. Costs are variable and depend upon the season, the supply, the efficiency of the handler, the economic condition of the market at a particular time, and the demand for the product. We think that when the draftsman of § 608c(5)(A) was

[4] This operation distorts any comparison between "producer prices" and "minimum prices". In order to make a comparison for purposes of § 608c(5)(A) we should know what class prices are paid by Lehigh and Sunerest in order properly to compare them with the order "minimum prices".

talking of uniform prices payable by handlers in accounting to the pool he was talking about uniform class prices required under a market order, and he was not considering these variable items which go into producer prices and which are beyond the scope of the regulatory plan. Under the orders only the floor, or minimum price, to the producer is the regulated price.[5]

The language of § 608c(5)(A) could not have been intended as a ceiling to prevent a handler from paying premiums for any reason whatever. Nor was it intended as a "loophole" for a handler who, for any reason, might find it expedient to pay a higher price and claim the order to be unconstitutional.

It seems to us that when the draftsman of § 608c(5)(A) was talking about uniformity, he was talking about uniformity of class price because without the uniformity requirement, an order could be rigged (or an administrator could permit) one handler to pay one price for Class I milk and another handler to pay a lesser or greater price for Class I milk. The language prices "uniform to all handlers" prevents discrimination on the class price level.

The provisions of the act are variables applicable to different circumstances.[6] Words of a statute may "have a color and a content that may vary with the setting", (*First National Bank* v. *Beach*, 301 U. S. 435, 440-

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[5] "The immediate object of the act is to fix minimum prices for the sale of milk by producers to handlers. It does not forbid sales at prices above the minimum." *Stark* v. *Wickard*, 321 U. S. 288, 291.

[6] Congress seems to have recognized that the statutory terms are applicable to divergent and mutable situations and that the effectiveness of the provisions depends upon their adaptability to conditions affecting each marketing area and upon their adjustment from time to time to meet changing conditions. (Sen. Rep. No. 565, 75th Cong. 1st Sess. p. 3. H. R. Rep. No. 468, 75th Cong. 1st. Sess. p. 3.)

441) and the general terms of a regulation ought not to be interpreted in "an abstract, sterile way." (*Federal Communications Commission* v. *R. C. A. Communications, Inc.*, 346 U. S. 86, 94.) "An elaborate enactment like this, devised by those who know the needs of the industry and drafted by legislative specialists, is to be treated as an organism. Every part must be related to the scheme as a whole."[7]

Reading the statute as a whole, the Court of Appeals for the Third Circuit concluded that § 8c(5)(A) does not refer to equalizing either fully regulated or partially regulated handlers' costs, nor does it take account of the initial cost of milk to handlers (R. p. 902), and would not impute to Congress a policy in one section which would directly conflict with the overall regulatory understaking (R. p. 903).

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[7] Frankfurter, J. in *Stark* v. *Wickard*, 321 U. S. 288, 311, 315-316, dissenting opinion.

Conclusion

Finally, we support the government's argument and position and respectfully urge that the judgment of the Court of Appeals, Third Circuit, be affirmed.

Respectfully submitted,

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APPENDIX A

Memorandum of the Principles of Cooperation to be Observed in the Formulation and Administration of Complementary Orders for Milk for Marketing Areas Located Within the State of New York to be Issued Concurrently by the Secretary of Agriculture and the Commissioner of Agriculture and Markets.

In order that the policies of cooperation embodied in Section 10 (i) of Public Act, No. 10, 73d Congress, as amended and as reenacted by the Agricultural Marketing Agreement Act of 1937, and Section 258-n of Article 21 of the Agricultural and Markets Law, State of New York, may have their fullest possible effect in spirit and in practice, the following principles of procedure are hereby mutually approved as the basis of cooperation in marketing areas in the State of New York in which Federal and State complementary and concurrent orders, rules, or regulations may hereafter be issued.

Joint Procedure

It shall be the policy of the Secretary of Agriculture and the Commissioner to act jointly in the formulation and issuance of complementary and concurrent orders regulating the acquisition of milk by handlers and milk dealers who market or in any manner participate in the acquisition, processing, or distribution of milk to be marketed in such marketing areas as may be defined in such complementary and concurrent Federal and State orders, and in pursuance thereof to jointly arrange for cooperation in the conduct of preliminary investigations, to hold joint or concurrent hearings, to jointly consider the facts contained in the rec-

ord of such hearings, and to maintain a mutual exchange of views conducive to common agreement upon all essential provisions prior to the issuance of either order. The same policy of joint action shall be followed with respect to modifications of or amendments to such orders.

Uniform Provisions

The Secretary of Agriculture and the Commissioner shall, in their respective complementary and concurrent orders for marketing areas within the State of New York, establish (a) identical classifications of milk to which comparable prices, inclusive of authorized assessments, fees, adjustments, or deductions, shall apply, and (b) identical differentials or other terms or conditions of purchase and acquisition and payment to the extent authorized by the respective Federal and State statutes. In the event any method of payment to producers or associations of producers is prescribed by both orders applicable to the same marketing area, provisions for such method shall be so drawn in the respective Federal and State complementary and concurrent orders that the plan of uniformity for all producers or associations of producers supplying the market will not be altered in any way by the fact that the acquisition of such milk or the payment therefor is deemed to be governed by either order. The contents of any such order issued by the Secretary of Agriculture or by the Commissioner shall be limited to terms, conditions, and prices relative to the acquisition of milk by handlers and milk dealers, and accounting and settlement therefor, and the administration thereof.

Appendix A

EXHANGE OF INFORMATION

It shall be the policy of the Secretary of Agriculture and the Commissioner to exchange all information essential to the proper administration of their respective complementary and concurrent orders and relative to transactions within the regulatory jurisdiction of such authorities. The confidential nature of information so exchanged shall be subject to the requirements of Section 10 (i) of Public No. 10, 73d Congress, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937, and, on the part of the Secretary of Agriculture, to the provisions of the Agriculture and Markets Law, State of New York, and in either case subject to such rules and regulations as may be issued under the respective Federal and State statutes.

ADMINISTRATIVE AGENCY

The Secretary of Agriculture and the Commissioner shall utilize one and the same agency for the administration of each respective complementary and concurrent order, which shall be a market administrator who is approved and designated as such by both the Secretary of Agriculture and the Commissioner. The duties of the market administrator shall be confined to the administration of the orders pursuant to which he has been designated and, while serving in such capacity, the market administrator and such personnel as may be employed by him shall not be utilized by either the Secretary of Agriculture or the Commissioner, during the period of employment, in the administration of any other orders or of the terms or

conditions in any other orders not common to both. All employees shall be under the exclusive direction of the market administrator and may be utilized to carry out any of his duties. Nothing herein shall be deemed to prevent the Secretary of Agriculture or the Commissioner from designating the same person as the market administrator of complementary and concurrent orders issued for each of two or more marketing areas within the State of New York.

FINANCES

Expenses incurred in the maintenance of the market administrator's office shall be paid by assessments or deductions made and collected for this purpose pursuant to the respective complementary and concurrent orders applicable to the same marketing area. Disbursements from the funds so collected shall be at the direction of the market administrator, subject to the audit of both Federal and State authorities. Such assessments or deductions shall be identical in rate and shall be made in such a way that uniformity under the Federal and State orders in returns to producers and gross cost to handlers or milk dealers, inclusive of such assessments or deductions as the case may be, shall not be affected by the manner of making the assessment or deduction under the respective orders.

Administrative expenses shall constitute only those expenses incurred in the performance of the duties of the market administrator as set forth in the respective complementary and concurrent orders applicable to a given marketing area as distinguished from overhead incurred by the Federal or State governments in the administration, supervision, and enforcement of such orders.

Appendix A

Administration

The market administrator designated under complementary and concurrent orders shall use a uniform system in securing periodical reports from handlers and milk dealers, in auditing and verifying the same and in making any and all necessary corrections or adjustments. The general policy of cooperation shall be understood to extend to the interpretation or application of uniform or similar provisions. It is also understood that whatever periodical reports are required to be made by the market administrator to the respective central offices of the Federal and State governments, shall be uniform. Likewise the books, records, and accounts of the market administrator shall be open for inspection and audit to both the Secretary of Agriculture and the Commissioner.

Enforcement

The failure of any person to comply with any of the provisions of a complementary and concurrent order shall be regarded as of mutual concern, and the respective governmental authorities shall be kept fully advised in regard thereto so that a cooperative effort may be made to decide upon a proper course of action. In all matters affecting enforcement of their respective complementary and concurrent orders applicable to the same marketing area, the Secretary of Agriculture and the Commissioner will undertake, both severally and jointly, to utilize all means at their disposal for the effective enforcement of such orders.

Appendix A

INTERSTATE COOPERATION

In recognition of a common interest in the regulation of marketing conditions on the part of duly constituted authorities of the State in which the marketing areas are located and those of the States from which substantial quantities of milk flow to such marketing areas, and with a view to encouraging coordination of effort in the regulation thereof, the Secretary of Agriculture and the Commissioner will follow the policy of inviting consultation with such authorities from time to time in matters of mutual interest arising in connection with the formulation, modification, or administration of complementary and concurrent orders applicable to marketing areas within the State of New York.

Signed this 26th day of August 1938.

HOLTON V. NOYES,
Commissioner of Agriculture and Markets,
State of New York.

/s/ H. A. WALLACE,
Secretary of Agriculture.

APPENDIX B

Order and Announcement of Commissioner of Agriculture and Markets Announcing the Adoption of Official Order No. 126 Regulating the Handling of Milk to be Sold in the New York Metropolitan Milk-Marketing Area.

WHEREAS, the Commissioner of Agriculture and Markets does hereby find that the adoption of Official Order No. 126 to regulate the handling of milk to be sold in the New York Metropolitan Milk-Marketing Area, a copy of which order is annexed hereto and made a part hereof, is approved or favored by over seventy-five per centum of the producers of milk produced in the production area for such marketing area as evidenced by a referendum conducted by the undersigned Commissioner concurrently with a referendum conducted by the Secretary of Agriculture of the United States on his Order No. 27 which is similar and complementary to Official Order No. 126, and

WHEREAS, the undersigned Commissioner of Agriculture and Markets does hereby find from testimony given at a hearing held jointly by the Secretary of Agriculture of the United States and by the undersigned Commissioner for the purpose of considering such similar and complementary orders and from information concerning conditions existing in the milk industry in the New York Metropolitan Milk-Marketing Area that conditions exist in such area which so affect the orderly marketing of milk in such area that public interest requires that the public policy declared in Section 258-k of the Agriculture and Markets Law shall be effective, and

WHEREAS, the Secretary of Agriculture of the United States has determined to promulgate and make effective his

Appendix B

Order No. 27 regulating the handling of milk in the aforesaid New York Metropolitan Milk-Marketing Area;

Now, THEREFORE, I, Holton V. Noyes, the Commissioner of Agriculture and Markets in the State of New York, pursuant to the terms and provisions of the Agriculture and Markets Law, as amended, and in accordance with the power and authority in me vested, do hereby adopt and promulgate Official Order No. 126, said order to become effective concurrently with and to be complementary to such similar Order No. 27 to be made effective by the Secretary of Agriculture of the United States.

Said Official Order No. 126 shall be effective on and after 12:01 a.m., e.s.t., September 1, 1938, and I do hereby order that from such date the handling of milk produced for sale in the New York Metropolitan Milk-Marketing Area shall be in conformity to and in compliance with the terms and conditions in said Official Order No. 126.

In addition I do hereby announce that the average of the prices reported daily during the sixty days preceding the 25th day of August, by the United States Department of Agriculture, for 92-score butter at wholesale in the New York market was 26.18 cents and that the average of the prices reported daily during the thirty days preceding the 25th day of August, by the United States Department of Agriculture, for 92-score butter at wholesale in the New York market was 26.25 cents; and hereby order that the Class I price pursuant to Article IV of said order, for the month of September, shall be $2.45 per hundredweight, and that the Class II-A price pursuant to Article IV of said

order for the month of September, shall be $1.75 per hundredweight.

IN WITNESS WHEREOF, I have hereto set my hand and the official seal of the Department of Agriculture and Markets of the State of New York, this 25th day of August, 1938.

[SEAL]

HOLTON V. NOYES,
Commissioner of Agriculture and Markets.

APPENDIX C

Compensatory Payment Provision of New York State Official Order No. 126

Sec. 927.83 Payments on milk received from dairy farmers at nonpool plants. Payments shall be made by handlers to producers, through the producer settlement fund, for milk and milk products under conditions, in amounts, and by the handler pursuant to paragraphs (a) through (d) of this section: **Provided**, That for any month in which the volume of Class III milk used in the computation of the uniform price is less than 15 percent of the combined volume of the Class I-A and Class II milk used in such computation, the payments set forth in this section shall not be required.

(a) Payments shall be made for milk, concentrated fluid milk, fluid milk products, cultured or flavored milk drinks, cream, half and half, fluid cream products, and skim milk, which milk or milk products meets each of the following conditions:

Appendix C

(1) It was derived from milk received at a nonpool plant from dairy farmers or is received at a plant from which milk specified in Sec. 927.65 (h) (2) or (3) was received from the handler's own farm.

(2) It was shipped to, received in, or distributed in the marketing area, or was received at a pool plant outside the marketing area.

(3) The milk or milk equivalent of the butterfat is classified as Class I-A or Class II, or the skim milk would be subject to the fluid skim differential if it were derived from pool milk.

(b) The amounts of payment for the products set forth in paragraph (a) of this section shall be as follows:

(1) If the milk or the milk equivalent of the butterfat, or the skim milk is classified and paid for under another order issued pursuant to the act, the amount of payment on such products, except skim milk, shall be any plus amount obtained by subtracting the value of the milk or the milk equivalent of the butterfat at the class price or prices under such order from the value computed in accordance with the classification and pricing set forth in this subpart: **Provided**, That the payment shall be at the rates set forth in subparagraph (2) of this paragraph if the other order permits the deduction of such payment from the amount otherwise due for such milk pursuant to such other order. The amount of payments on skim milk shall be an amount computed pursuant to Sec. 927.44 adjusted for the location of the plant.

(2) If the milk or milk product is derived from milk received from dairy farmers at a nonpool plant in the 401-425 mile zone, or in some other zone nearer the marketing area, the handling of which is not regulated by an order issued pursuant to the act or is regulated by another order as specified in the proviso of subparagraph (1) of this paragraph, the amount of payment, except as otherwise specified in subparagraph (4) of this paragraph, shall be the difference between its classified value at the Class I-A or the Class II price, depending upon its classification, and its value at the Class III price, such class prices to be adjusted for butterfat test and the location of the plant at which the nonpool milk was originally received from farmers: **Provided**, That for concentrated fluid milk, cream, half and half, fluid cream products, and cultured or flavored milk drinks containing less than 3.0 percent or more than 5.0 percent butterfat, the payment shall be computed on the milk equivalent thereof as so classified. The amount of the payment on skim milk (either as skim milk, half and half, or in cultured milk drinks) shall be the amount computed pursuant to Sec. 927.44 as similarly adjusted for location.

(3) If the milk or milk product is derived from milk received from dairy farmers at a nonpool plant farther from the marketing area than the 401-425 mile zone, the handling of which is not regulated by another order issued pursuant to the act, or is regulated by another order as specified in the proviso of subparagraph (1) of this paragraph, the amount of payments shall be the difference between the value of its milk

equivalent at the Class I-A or Class II price, depending upon its classification, and the value of such milk at the midwestern condensery price announced pursuant to Sec. 927.46 (b) (9), such class prices to be adjusted for the location of the plant at which the nonpool milk was originally received from dairy farmers: **Provided,** That for milk, fluid milk products, and cultured or flavored milk drinks containing 3.0 percent or more but not more than 5.0 percent of butterfat, the payment shall be the difference between the value of such milk or milk product at the Class I-A price for milk containing 3.5 percent butterfat, adjusted for location of the plant, and the condensery price. The amount of the payment on skim milk (either as skim milk, half and half, or in cultured milk drinks) shall be the amount computed pursuant to Sec. 927.44 similarly adjusted for location.

(4) For any month in which the volume of milk subject to the butter-cheese adjustment used in the computation of the uniform price is more than 15 percent of the combined volume of the Class I-A and Class II milk used in such computation, the payment required by subparagraph (2) of this paragraph shall be increased by the value of the milk or milk equivalent at the rate of the butter-cheese adjustment at the plant where the milk was received from dairy farmers.

(5) In computing the milk equivalent value of milk or milk products as specified in this paragraph, such value shall be computed on the basis of milk containing 3.5 percent of butterfat.

(c) Payment for any milk or milk product pursuant to this section shall be made, on behalf of the handler receiving the milk from dairy farmers, by the appropriate handler as set forth in subparagraphs (1) through (3) of this paragraph: **Provided**, That if the milk is received from a handler under another order issued pursuant to the act, which order provides that the payment to the producer settlement fund may be deducted from the handler's obligation under the other order, the payment shall be made by the handler subject to the other order regardless of the provisions of subparagraphs (1) through (3) of this paragraph:

(1) By the handler first receiving the milk or milk product at a pool plant outside the marketing area.

(2) By the handler operating the plant where the milk or milk product is first received in the marketing area if the milk or milk product is not received at a pool plant outside the marketing area.

(3) By the handler operating the plant from which the milk or milk product was moved into the marketing area if such milk or milk product is neither received at a pool plant outside the marketing area nor at a plant in the marketing area.

(d) The amount due pursuant to this section shall be entered on the handler's account as a debit immediately after the filing of the report pursuant to Sec. 927.50, or if the handler fails to file such report, such amount shall be entered on the handler's account in accordance with Sec. 927.80.